

Subpart 16.2—Fixed-Price Contracts**16.201 General.**

Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. The contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items.

[48 FR 42219, Sept. 19, 1983, as amended at 60 FR 48248, Sept. 18, 1995]

16.202 Firm-fixed-price contracts.**16.202-1 Description.**

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

[48 FR 42219, Sept. 19, 1983, as amended at 68 FR 13201, Mar. 18, 2003]

16.202-2 Application.

A firm-fixed-price contract is suitable for acquiring commercial items (see parts 2 and 12) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see part 11) when

the contracting officer can establish fair and reasonable prices at the outset, such as when—

(a) There is adequate price competition;

(b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;

(c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or

(d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

[48 FR 42219, Sept. 19, 1983, as amended at 60 FR 48248, Sept. 18, 1995]

16.203 Fixed-price contracts with economic price adjustment.**16.203-1 Description.**

(a) A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:

(1) *Adjustments based on established prices.* These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.

(2) *Adjustments based on actual costs of labor or material.* These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.

(3) *Adjustments based on cost indexes of labor or material.* These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

(b) The contracting officer may use a fixed-price contract with economic price adjustment in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award

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fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

[48 FR 42219, Sept. 19, 1983, as amended at 68 FR 13201, Mar. 18, 2003]

16.203-2 Application.

A fixed-price contract with economic price adjustment may be used when (i) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance, and (ii) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control. For use of economic price adjustment in sealed bid contracts, see 14.408-4.

(a) In establishing the base level from which adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under economic price adjustment clause.

(b) In contracts that do not require submission of cost or pricing data, the contracting officer shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

[48 FR 42219, Sept. 19, 1983, as amended at 50 FR 1742, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 34739, July 3, 1995]

16.203-3 Limitations.

A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

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16.203-4 Contract clauses.

(a) *Adjustment based on established prices—standard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment—Standard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all the conditions in subparagraph (a)(1) above apply and the contracting officer determines that the use of the clause at 52.216-2 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-2.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(b) *Adjustment based on established prices—semistandard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment—Semistandard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed price contract is contemplated.

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in subparagraph (b)(1) above apply and the contracting officer determines that the use of the clause at 52.216-3 is inappropriate, the contracting officer may use an agency-